Supreme Court, U.S.
FILED
DEC 23 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-765

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MISSOURI PACIFIC RAILROAD COMPANY
and JOSEPH FALVEY,
Petitioners,

v.

C. RUDOLPH EVANS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITIONERS' SUPPLEMENTAL BRIEF

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December 23, 1986

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PETITIONERS' SUPPLEMENTAL BRIEF

Petitioners Missouri Pacific Railroad Company and Joseph Falvey submit this supplemental brief, pursuant to Rule 22.6 of the Rules of this Court, to call the Court's attention to the relationship between this case and another case in which this Court recently has issued a writ of certiorari.[1]

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[1] A statement of the corporate affiliations of petitioner Missouri Pacific Railroad Company is set forth in accordance with Rule 28.1 in the petition for certiorari.

ARGUMENT

This Court Has Granted Certiorari in Another Case Whose Issues Are Closely Related To The Issues In This Case

As explained in detail in the petition for certiorari, this case presents important questions concerning the scope of federal jurisdiction over claims falling within the scope of § 3 of the Railway Labor Act. Five days after the petition for certiorari was filed in this case, this Court granted certiorari in *Caterpillar Inc.* v. *Williams*, No. 86-526 (cert. granted November 17, 1986). *Caterpillar* presents the same basic issues of federal jurisdiction with respect to a related federal labor statute — § 301 of the Labor Management Relations (Taft-Hartley) Act. This Court's grant of certiorari in *Caterpillar* provides a further reason why certiorari should be granted in this case.

In *Caterpillar*, former employees of Caterpillar Tractor Company brought suit in state court challenging their discharge in connection with the closing of a Caterpillar plant. Rather than seek relief under § 301 of the Taft-Hartley Act, which creates an exclusive federal cause of action for claims relating to collective bargaining agreements and preempts overlapping state-law causes of action, the employees purported to frame their claims exclusively in terms of state contract and tort law. The employer sought to remove the dispute to federal court under 28 U.S.C. § 1441 on the ground that the employees' claims were preempted by, and necessarily "arose under," § 301.

The Ninth Circuit held on appeal that the employees' claims did not "arise under" § 301, and therefore were not removable, even if those claims were in fact preempted by § 301. *Williams* v. *Caterpillar Tractor Co.*, 786 F.2d 928 (9th Cir. 1986). The Ninth Circuit held that purported state-law claims do not "arise under" federal law for purposes of the "artful pleading" doc-

trine, even when they are preempted by a comprehensive federal statutory scheme, unless the federal statute not only preempts state law but provides federal relief for the specific conduct at issue. 786 F.2d at 931-33. The Ninth Circuit found that this standard had not been met because the employees' claims purported to rest on alleged private employment contracts, rather than on the applicable collective bargaining agreement, and § 301 provides relief only for claims premised on collective bargaining agreements. *Id.* at 935-37.

The basic issues presented in *Caterpillar* are the same as those presented in this case. Like this case, *Caterpillar* requires this Court to define the breadth of federal jurisdiction over claims within the preemptive scope of federal labor law. This case and *Caterpillar* both call on the Court to decide whether an employee whose claim is completely preempted by federal labor law, leaving federal law the only possible avenue for redress, can nonetheless evade federal removal jurisdiction by casting his claim in the form of a state-law cause of action. If this Court reverses the Ninth Circuit in *Caterpillar*, the Eighth Circuit's decision in this case cannot stand.[2]

The petitioners already have shown in the petition for certiorari (at pp. 19-22) that this case is closely related to several other granted cases now before this Court, including *Metropolitan Life Ins. Co.* v. *Taylor* and *General Motors Corp.* v. *Taylor*, Nos. 85-686 and 85-688, and

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[2] The Eighth Circuit's decision in this case rests on an even more extreme position than the Ninth Circuit's decision in *Caterpillar*. While the Ninth Circuit was prepared to recognize the existence of federal removal juridiction when federal law both preempts state law and provides an alternate federal cause of action, the Eighth Circuit has taken the position in this case that removal based on complete federal preemption is simply unavailable. See *Evans* v. *Missouri Pacific R. Co.*, 795 F.2d 57, 58 (8th Cir. 1986) (App. to Pet. for Cert. 3a-4a). Thus, if the Ninth Circuit's reasoning in *Caterpillar* is incorrect, the reasoning of the Eighth Circuit here is incorrect *a fortiori*.

that the Court's grant of certiorari in those cases supports a grant of certiorari here. The Court's grant of certiorari in *Caterpillar* is further support for that result. Alternatively, if plenary review is found unwarranted, this case should be held not only for the *Taylor* cases and the other granted cases cited in the petition for certiorari but for *Caterpillar* as well.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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